

AMENDED IN SENATE APRIL 13, 2005

**SENATE BILL**

**No. 417**

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**Introduced by Senator Ortiz**

February 17, 2005

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~~An act to amend Section 186.1 of the Penal Code, relating to criminal profiteering.~~ *An act to add Section 734 to the Business and Professions Code, and to add Section 1371.371 to the Health and Safety Code, relating to health care coverage.*

LEGISLATIVE COUNSEL'S DIGEST

SB 417, as amended, Ortiz. ~~Criminal profiteering; health care plans~~  
*Payment of provider claims.*

*(1) Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. Under the act, a plan is required to reimburse within a specified timeframe, an uncontested claim submitted to it by a provider.*

*This bill would require the department to review complaints by providers concerning the payment practices of a health care service plan or an entity with which the plan contracts for payment of claims, to determine if the practice constitutes an unfair payment practice, as defined. The bill would require the director of the department to assess a monetary penalty for the commission of an unfair payment practice.*

*(2) Existing law makes certain acts by health care professionals unprofessional conduct, including the failure of a physician and surgeon or a dentist to refund a duplicate payment he or she received for services provided to a patient.*

*This bill would make it unprofessional conduct for a healing arts practitioner to engage in a pattern of billing patients for services*

*without first submitting a claim to their health care coverage plan. The bill would also make it unprofessional conduct for these practitioners to fail to notify a patient, as specified, that the cost of services may be reimbursed by the patient's health care coverage plan.*

~~Existing law, the California Control of Profits of Organized Crime Act, provides for the forfeiture of profits acquired as a result of criminal activities of organized crime.~~

~~This bill would provide that health maintenance organizations and health care plans that systematically engage in payment practices that have the effect of delaying or denying payment, or underpaying health care providers who provide services to enrollees of the plan or organization are subject to prosecution under those provisions. Because the bill would expand the scope of a crime, the bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~yes~~no.

*The people of the State of California do enact as follows:*

- 1     ~~SECTION 1. Section 186.1 of the Penal Code is amended to~~
- 2     ~~read:~~
- 3     ~~SECTION 1. Section 734 is added to the Business and~~
- 4     ~~Professions Code, to read:~~
- 5     ~~734. (a) It shall constitute unprofessional conduct for a~~
- 6     ~~person licensed under this division to engage in a pattern of~~
- 7     ~~billing a patient who is an enrollee of a health care service plan,~~
- 8     ~~an insured under a health insurance policy, or who has any other~~
- 9     ~~type of health care coverage, for amounts in excess of any~~
- 10    ~~applicable copayments, deductibles, or coinsurance, unless the~~
- 11    ~~person has first billed the patient's health care service plan,~~

1 *health insurer, or other health care coverage plan, and it has*  
2 *denied payment of all or part of the claim.*

3 *(b) It shall constitute unprofessional conduct for a person*  
4 *licensed under this division to fail to include the following in any*  
5 *billing statement or statement of charges that he or she sends to*  
6 *a patient who is an enrollee of a health care service plan, an*  
7 *insured under a health insurance policy, or who has any other*  
8 *type of health care coverage plan, if the charges are in excess of*  
9 *any applicable copayments, deductibles, or coinsurance:*

10 *(1) A prominent notice that the services being billed for may*  
11 *be covered under the patients' health care coverage plan.*

12 *(2) A statement that the patient may contact the Department of*  
13 *Managed Health Care HMO Help Center for assistance if the*  
14 *patient believes he or she has been billed incorrectly and the*  
15 *toll-free telephone number for the HMO Help Center.*

16 *(c) This section shall not affect any other protections under*  
17 *state or federal law afforded to an enrollee of a health care*  
18 *service plan, an insured under a health insurance policy, or to a*  
19 *person who has any other type of health care coverage plan.*

20 *SEC. 2. Section 1371.371 is added to the Health and Safety*  
21 *Code, to read:*

22 *1371.371. (a) The department shall review individual*  
23 *complaints from providers concerning the payment practices of a*  
24 *health care service plan or of an entity that contracts with the*  
25 *plan to pay claims submitted to the plan by providers. The*  
26 *department may take an enforcement action based on a single*  
27 *commission of an unfair payment practice, but shall prioritize the*  
28 *complaints it receives based on their severity and seriousness.*

29 *(b) (1) Upon a determination that a health care service plan*  
30 *has engaged in an unfair payment practice, the director shall*  
31 *order the plan to pay to the provider three times the amount that*  
32 *has been determined to have been inappropriately withheld and*  
33 *shall impose any other remedy authorized under this chapter*  
34 *sufficient to deter the future commission of an unfair payment*  
35 *practice.*

36 *(2) For purposes of this section, an unfair payment practice*  
37 *shall include a payment practice that results in any of the*  
38 *following:*

39 *(A) A failure to pay the claim as specified in Section 1371 or*  
40 *1371.35.*

1 (B) A failure to pay statutory interest and penalties as  
2 specified in Section 1371 or 1371.35.

3 (C) A failure to comply with Section 1371.1, 1371.2, 1371.36,  
4 1371.8, or 1395.6.

5 (c) A health care service plan may not delegate any statutory  
6 liability under this section.

7 (d) The enforcement remedies provided in this section are not  
8 exclusive and shall not limit or preclude a person from  
9 exercising any other available criminal, civil, or administrative  
10 remedy.

11 (e) The penalties applicable under this section shall not  
12 preclude, suspend, affect, or impact any other duty, right,  
13 responsibility, or obligation under a statute or under a contract  
14 between a health care service plan and a provider.

15 (f) Nothing in this section shall authorize the department to  
16 establish rates or charges for services provided to subscribers  
17 and enrollees.

18 ~~186.1. (a) The Legislature hereby finds and declares that an~~  
19 ~~effective means of punishing and deterring criminal activities of~~  
20 ~~organized crime is through the forfeiture of profits acquired and~~  
21 ~~accumulated as a result of such criminal activities. It is the intent~~  
22 ~~of the Legislature that the “California Control of Profits of~~  
23 ~~Organized Crime Act” be used by prosecutors to punish and~~  
24 ~~deter only those activities.~~

25 ~~(b) Health maintenance organizations and health care plans that~~  
26 ~~systematically engage in payment practices that have the effect of~~  
27 ~~delaying or denying payment, or underpaying health care~~  
28 ~~providers who provide services to enrollees of the plan or~~  
29 ~~organization are subject to prosecution under this chapter.~~

30 ~~SEC. 2. If the Commission on State Mandates determines that~~  
31 ~~this act contains costs mandated by the state, reimbursement to~~  
32 ~~local agencies and school districts for those costs shall be made~~  
33 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
34 ~~4 of Title 2 of the Government Code.~~